



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

## **Decision**

**Matter of:** Moody Bros. of Jacksonville, Inc.; Troika  
International Ltd.

**File:** B-238844

**Date:** June 12, 1990

Robert W. Turner, for the protesters.  
Howard G. Curtis, Esq., Office of the Judge Advocate  
General, Department of the Army, for the agency.  
Richard P. Burkard, Esq., and Michael R. Golden, Esq, Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### **DIGEST**

Protest concerning request for carriers' rate tenders falls  
outside of General Accounting Office's bid protest  
jurisdiction, where transportation services will be obtained  
through the issuance of a government bill of lading pursuant  
to a tender for a one-time routing under relatively informal  
agency procedures.

### **DECISION**

Moody Bros. of Jacksonville, Inc. and Troika International  
Ltd. protest the failure by the Military Traffic Management  
Command (MTMC) to solicit either firm for the transportation  
by barge of 35 sea sheds from Perryville, Maryland to Port  
Hueneme, California, pursuant to Route Order No. 1NXX15428.  
The protesters argue that they were precluded from competing  
for the shipment.

We dismiss the protest because we conclude that this matter  
falls outside our bid protest jurisdiction.

MTMC is the agency responsible for the direction, control,  
and supervision of all functions incident to the acquisition  
and use of freight transportation services for the  
Department of Defense (DOD) from commercial transportation  
companies. MTMC acquires its transportation services  
pursuant to the Defense Traffic Management Regulation, which  
provides for MTMC authority over DOD transportation, and the  
MTMC Inland Freight Traffic Regulation (MTMCR) 55-1 which  
governs negotiations for commercial transportation,

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tariffs, tenders, rates and routings. See Federal Transport, Inc.--Request for Recon., 68 Comp. Gen. 451 (1989), 89-1 CPD ¶ 542.

The procurement at issue here is a "spot movement negotiation" for a "spot movement" which is defined as a one-time shipment of a commodity on one bill of lading which requires special equipment or service not otherwise provided by tariff or special rate tender. MTMCR 55-1, § 2-2.2. That regulation further provides that "area commanders will solicit tenders from all carriers who possess the necessary operating authorities to perform the services required." MTMCR 55-1, § 2-2.3.

Neither Troika nor Moody Bros. was contacted for the spot bidding for route order No. INXX15428, which ended on February 9, 1990. By letter dated February 26, the protesters filed a protest with the agency arguing that it should have been included in the competition for this spot movement. The agency denied the protest, stating that the protesters did not have proper Interstate Commerce Commission (ICC) common carrier authority and that the protesters' Contract Water Carrier Authority does not allow Moody Bros. to transport the commodities in question under the route order.<sup>1/</sup> The agency also advised the protesters that, except under limited circumstances which are not present here, it "does not do business with brokers or contract carriers." Finally, the agency stated that it lacked required information about the relationship between Moody Bros. and Troika. This protest followed.

The agency argues that since the acquisition of these transportation services is accomplished by government bill of lading (GBL) under regulations promulgated by MTMC, the protest is outside our bid protest jurisdiction. The agency points out that we addressed the question of the extent of our jurisdiction concerning requests for rate tenders in Federal Transport, Inc.--Request for Recon., 68 Comp. Gen. 451, supra. In that decision, we reversed previous cases and asserted jurisdiction over protests concerning request for tenders issued under MTMC's guaranteed traffic program conducted under the

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<sup>1/</sup> The record shows that Moody Bros. obtained ICC common carrier authority on March 30, 1990. The agency states that as of that date, it recognizes that Moody Bros. has authority to make similar spot movements. Moreover, the protesters have advised our Office that the agency has contacted them for similar movements since March 30.

Transportation Act of 1940, as amended, 49 U.S.C. § 10721 (1982). Id.

We did so because we found that all the indicia of procurement were present in MTMC's guaranteed traffic program. For example, the program involves a formal solicitation and a formal source selection, and the solicitation issued contains provisions and language similar to that from the Federal Acquisition Regulation (FAR) and Department of Defense Federal Acquisition Regulation Supplement (DFARS) for the procurement of transportation services. Further, we found that the agency's guaranteed traffic program gives rise to what was, in effect, a requirements contract involving repetitive movements, which was distinguishable from the majority of the government transportation business, where MTMC merely selects a tender and issues a GBL for one-time routine routings without any type of formal solicitation or formal source selection. Thus, we concluded that the protest against the guaranteed rate program solicitation fell within our jurisdiction as established by the Competition in Contracting Act of 1984, 31 U.S.C. § 3552 (1988), which authorizes our Office to decide protests concerning alleged violations of procurement statute or regulation.

The record here shows that there are important differences between the procedures used for MTMC's guaranteed traffic program and those used under the spot bid procedures. Here, MTMC is employing its own informal procedures to accomplish a one-time GBL shipment; no formal solicitation has been issued or source selection conducted. Also, no language or provisions similar to those in the FAR and DFARS are being used. We therefore view this procedure as a routine one-time tender for transportation services not analogous to the guaranteed traffic program requirements type contract which we consider within our jurisdiction.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Associate General Counsel